

COLORADO BEER CODE

ARTICLE 4, TITLE 44, C.R.S.

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Please note this copy of the Colorado Beer Code does not reflect statutory changes as a result of Proposition 125, which will go into effect March 1, 2023.

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ARTICLE 4

Fermented Malt Beverages

Editor's note: This article 4 was added with relocations in 2018. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 4, see the comparative tables located in the back of the index.

44-4-101. Short title. The short title of this article 4 is the "Colorado Beer Code".

Source: L. 2018: Entire article added with relocations, (HB 18-1025), ch. 152, p. 1067, § 2, effective October 1.

Editor's note: This section is similar to former § 12-46-101 as it existed prior to 2018.

44-4-102. Legislative declaration. (1) The general assembly hereby declares that it is in the public interest that fermented malt beverages shall be sold at retail only by persons licensed as provided in this article 4. The general assembly further declares that it is lawful to sell fermented malt beverages at retail subject to this article 4 and applicable provisions of articles 3 and 5 of this title 44.

(2) The general assembly further recognizes that fermented malt beverages and malt liquors are separate and distinct from, and have a unique regulatory history in relation to, vinous and spirituous liquors; however, maintaining a separate regulatory framework and licensing structure for fermented malt beverages under this article 4 is no longer necessary except at the retail level. Furthermore, to aid administrative efficiency, article 3 of this title 44 applies to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article 4.

Source: L. 2018: Entire article added with relocations, (HB 18-1025), ch. 152, p. 1067, § 2, effective October 1. **L. 2019:** Entire section amended, (SB 19-011), ch. 1, p. 1, § 1, effective January 31.

Editor's note: This section is similar to former § 12-46-102 as it existed prior to 2018.

44-4-103. Definitions. Definitions applicable to this article 4 also appear in article 3 of this title 44. As used in this article 4, unless the context otherwise requires:

(1) (a) "Fermented malt beverage" means malt liquors, when purchased by a fermented malt beverage retailer from a wholesaler licensed pursuant to article 3 of this title 44; or when sold by a fermented malt beverage retailer to consumers or to persons licensed under section 44-3-411, 44-3-413, 44-3-414, 44-3-416 to 44-3-420, 44-3-422, 44-3-426, or 44-3-428.

(b) "Fermented malt beverage" does not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1)(i)(II).

(2) "License" means a grant to a licensee to sell fermented malt beverages at retail as provided by this article 4.

(3) "Licensed premises" means the premises specified in an application for a license under this article 4 that are owned or in possession of the licensee and within which the licensee is authorized to sell, dispense, or serve fermented malt beverages in accordance with the provisions of this article 4.

(4) "Local licensing authority" means the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution.

(5) Repealed.

(6) "State licensing authority" means the executive director or the deputy director of the department if the executive director so designates.

Source: L. 2018: Entire article added with relocations, (HB 18-1025), ch. 152, p. 1067, § 2, effective October 1. **L. 2019:** (1)(a) and (2) amended and (5) repealed, (SB 19-011), ch. 1, p. 2, § 2, effective January 31.

Editor's note: This section is similar to former § 12-46-103 as it existed prior to 2018.

44-4-104. Licenses - state license fees - requirements - definition. (1) The licenses to be granted and issued by the state licensing authority pursuant to this article 4 for the retail sale of fermented malt beverages are as follows:

(a) and (b) Repealed.

(c) (I) (A) A retailer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 44-3-301 and not prohibited from licensure under section 44-3-307 to sell at retail fermented malt beverages either for consumption off the licensed premises or for consumption on the licensed premises or, subject to subsection (1)(c)(III) of this section, for consumption on and off the licensed premises, upon paying an annual license fee of seventy-five dollars to the state licensing authority.

(B) A person licensed pursuant to this subsection (1)(c) to sell fermented malt beverages at retail shall purchase the fermented malt beverages only from a wholesaler licensed pursuant to article 3 of this title 44.

(II) Except as otherwise provided in subsection (1)(c)(III) of this section:

(A) The state licensing authority shall not issue a new or renew a fermented malt beverage retailer's license for the sale of fermented malt beverages for consumption on and off the licensed premises; and

(B) Any licensee holding a fermented malt beverage license authorizing the sale of fermented malt beverages for consumption on and off the licensed premises that was issued by the state licensing authority under this subsection (1)(c) before June 4, 2018, that applies to renew the license on or after June 4, 2018, and whose licensed premises is located in a county with a population of thirty-five thousand or more and not in an underserved area must simultaneously apply to convert the license either to a license for the sale of fermented malt beverages at retail for consumption off the licensed premises or to a license for the sale of fermented malt beverages at retail for consumption on the licensed premises.

(III) (A) The state licensing authority may issue a new or renew a fermented malt beverage retailer's license for the sale of fermented malt beverages for consumption on and off the licensed premises if the licensed premises is located in a county with a population of less than thirty-five thousand or in an underserved area.

(B) Repealed.

(IV) As used in this subsection (1)(c), "underserved area" means an area that is within a county with a population of thirty-five thousand or more but lies outside of municipal boundaries or is a city or town with a population of less than seven thousand five hundred.

(V) For purposes of this subsection (1)(c), population is determined according to the most recently available population statistics of the United States census bureau.

(d) Repealed.

(e) (I) Notwithstanding any law to the contrary, beginning on January 31, 2019, the state licensing authority shall not issue or renew any licenses under this section except for licenses authorized under subsection (1)(c) of this section.

(II) Licenses issued by the state licensing authority under subsection (1)(a), (1)(b), or (1)(d) of this section in effect on January 31, 2019, immediately convert, on January 31, 2019, without any further act by the state licensing authority or the licensee, as follows:

(A) A manufacturer's license that was issued under subsection (1)(a) of this section, as it existed before January 31, 2019, converts to a manufacturer's license issued pursuant to section 44-3-402 for the manufacture of malt liquors;

(B) A wholesaler's license that was issued under subsection (1)(b) of this section, as it existed before January 31, 2019, converts to a wholesaler's beer license issued pursuant to section 44-3-407 (1)(b);

(C) A nonresident manufacturer's license that was issued under subsection (1)(d)(I) of this section, as it existed before January 31, 2019, converts to a nonresident manufacturer's license issued pursuant to section 44-3-406 (1); and

(D) An importer's license that was issued under subsection (1)(d)(II) of this section, as it existed before January 31, 2019, converts to a malt liquor importer's license issued pursuant to section 44-3-406 (2).

(III) The conversion of a license issued under subsection (1)(a), (1)(b), or (1)(d) of this section to a license issued under article 3 of this title 44 pursuant to subsection (1)(e)(II) of this section is a continuation of the prior license issued pursuant to this article 4 and does not affect:

(A) Any prior discipline, limitation, or condition imposed by the state licensing authority on a licensee;

(B) The deadline for renewal of a license; or

(C) Any pending or future investigation or administrative proceeding.

(2) Notwithstanding the amount specified for any fee in subsection (1) of this section, the state licensing authority, by rule or as otherwise provided by law, may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3) to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state licensing authority, by rule or as otherwise provided by law, may increase the amount of one or more of the fees as provided in section 24-75-402 (4).

(3) Repealed.

(4) It is unlawful for any retail licensee under this article 4 to be interested financially, directly or indirectly, in the business of any manufacturer or wholesaler or any person, partnership, association, organization, or corporation interested in or with any of the manufacturers or wholesalers licensed pursuant to article 3 of this title 44.

Source: **L. 2018:** IP(1) and (1)(c) amended, (SB 18-243), ch. 366, p. 2191, § 2, effective June 4; entire article added with relocations, (HB 18-1025), ch. 152, p. 1068, § 2, effective October 1. **L. 2019:** IP(1), (1)(c)(I), and (4) amended, (1)(a), (1)(b), (1)(d), and (3) repealed, and (1)(e) added (SB 19-011), ch. 1, p. 2, § 3, effective January 31; (1)(c) amended, (SB 19-028), ch. 4, p. 22, § 1, effective February 20.

Editor's note: (1) This section is similar to former § 12-46-104 as it existed prior to 2018.

(2) Subsections IP(1) and (1)(c) of this section were numbered as § 12-46-104 IP(1) and (1)(c), respectively, in SB 18-243. Those provisions were harmonized with and relocated to this section as this section appears in HB 18-1025.

(3) Amendments to subsection (1)(c) by SB 19-011 and SB 19-028 were harmonized.

(4) Subsection (1)(c)(III)(B) provided for the repeal of subsection (1)(c)(III)(B), effective September 1, 2021. (See L. 2019, p. 22.)

Cross references: For the legislative declaration in SB 18-243, see section 1 of chapter 366, Session Laws of Colorado 2018.

44-4-105. Fees and taxes - allocation. (1) (a) (I) The state licensing authority shall establish fees for processing the following types of applications, notices, or reports required to be submitted to the state licensing authority:

(A) Applications for new fermented malt beverage licenses pursuant to section 44-3-301 and rules thereunder;

(B) Applications for change of location pursuant to section 44-3-301 and rules thereunder;

(C) Applications for changing, altering, or modifying licensed premises pursuant to section 44-3-301 and rules thereunder;

(D) Applications for duplicate licenses;

(E) Notices of change of name or trade name pursuant to section 44-3-301 and rules thereunder; and

(F) Applications for the renewal of a license or permit issued in accordance with this article 4.

(II) When added to the other fees and taxes transferred to the liquor enforcement division and state licensing authority cash fund under subsection (2) of this section and section 44-3-502 (1), the state licensing authority shall set the amounts of the fees imposed under this subsection (1)(a) to reflect the direct and indirect costs of the liquor enforcement division and the state licensing authority in the administration and enforcement of this article 4 and articles 3 and 5 of this title 44. At least annually, the amounts of the fees shall be reviewed and, if necessary, adjusted to reflect these direct and indirect costs.

(b) Except as provided in subsection (1)(c) of this section, the state licensing authority shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state licensing authority or upon any employee of the division, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104 for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state licensing authority for each day of attendance to cover the expenses of the person named in the subpoena.

(c) The subpoena fee established pursuant to subsection (1)(b) of this section shall not be applicable to any state or local governmental agency.

(2) (a) All state license fees provided for by this article 4 and all fees provided for by subsections (1)(a) and (1)(b) of this section for processing applications, reports, and notices shall be paid to the department, which shall transmit the fees and taxes to the state treasurer. The state treasurer shall credit eighty-five percent of the fees and taxes to the old age pension fund and the balance to the general fund.

(b) An amount equal to the revenues attributable to fifty dollars of each state license fee provided for by this article 4 and the processing fees provided for by subsections (1)(a) and (1)(b) of this section shall be transferred out of the general fund to the liquor enforcement division and state licensing authority cash fund. The transfer shall be made by the state treasurer as soon as possible after the twentieth day of the month following the payment of the fees.

(c) The expenditures of the state licensing authority and the liquor enforcement division shall be paid out of appropriations from the liquor enforcement division and state licensing authority cash fund as provided in section 44-6-101.

(3) Eighty-five percent of the local license fees set forth in section 44-4-107 (2) shall be paid to the department, which shall transmit the fees to the state treasurer to be credited to the old age pension fund.

Source: L. 2018: Entire article added with relocations, (HB 18-1025), ch. 152, p. 1070, § 2, effective October 1; (2)(c) amended, (HB 18-1026), ch. 24, p. 281, § 4, effective October 1. **L. 2019:** (1)(a) amended, (SB 19-011), ch. 1, p. 16, § 26, effective January 31. **L. 2020:** (1)(a) amended, (SB 20-086), ch. 67, p. 270, § 3, effective September 14.

Editor's note: (1) This section is similar to former § 12-46-105 as it existed prior to 2018.

(2) Subsection (2)(c) of this section was numbered as § 12-46-105 (2)(c) in HB 18-1026. That provision was harmonized with and relocated to this section as this section appears in HB 18-1025.

44-4-106. Lawful acts. (1) It is lawful for a person under eighteen years of age who is under the supervision of a person on the premises eighteen years of age or older to be employed in a place of business where fermented malt beverages are sold at retail in containers for off-premises consumption. During the normal course of such employment, any person under twenty-one years of age may handle and otherwise act with respect to fermented malt beverages in the same manner as that person does with other items sold at retail; except that:

(a) A person under eighteen years of age shall not sell or dispense fermented malt beverages, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet; and

(b) A person who is under twenty-one years of age shall not deliver fermented malt beverages in sealed containers to customers under section 44-4-107 (6).

(2) This section does not permit the violation of any other provisions of this section under circumstances not specified in this section.

Source: L. 2018: Entire article added with relocations, (HB 18-1025), ch. 152, p. 1071, § 2, effective October 1; entire section amended, (SB 18-243), ch. 366, p. 2192, § 3, effective January 1, 2019.

Editor's note: (1) This section is similar to former § 12-46-106 as it existed prior to 2018.

(2) This section was numbered as § 12-46-106 in SB 18-243. That section was harmonized with and relocated to this section as this section appears in HB 18-1025, effective January 1, 2019.

Cross references: For the legislative declaration in SB 18-243, see section 1 of chapter 366, Session Laws of Colorado 2018.

44-4-107. Local licensing authority - application - fees - definitions - rules. (1) The local licensing authority shall issue only the following classes of fermented malt beverage licenses:

(a) Sales for consumption off the premises of the licensee;

- (b) Sales for consumption on the premises of the licensee;
- (c) (I) Subject to subsections (1)(c)(II) and (1)(c)(III) of this section, sales for consumption both on and off the premises of the licensee.
 - (II) Except as otherwise provided in subsection (1)(c)(III) of this section:
 - (A) A local licensing authority shall not issue a new fermented malt beverage license or renew an existing fermented malt beverage license for the sale of fermented malt beverages for consumption on and off the licensed premises; and
 - (B) Any licensee holding a fermented malt beverage license issued under this subsection (1)(c) prior to June 4, 2018, that applies to renew the license on or after June 4, 2018, and whose licensed premises is located in a county with a population of thirty-five thousand or more and not in an underserved area must simultaneously apply to convert the license either to a license for the sale of fermented malt beverages for consumption off the licensed premises as specified in subsection (1)(a) of this section or to a license for the sale of fermented malt beverages for consumption on the licensed premises as specified in subsection (1)(b) of this section.
 - (III) (A) The local licensing authority may issue a new or renew a fermented malt beverage retailer's license for the sale of fermented malt beverages for consumption on and off the licensed premises if the licensed premises is located in a county with a population of less than thirty-five thousand or in an underserved area.
 - (B) Repealed.
 - (IV) As used in this subsection (1)(c), "underserved area" means an area that is within a county with a population of thirty-five thousand or more but lies outside of municipal boundaries or is a city or town with a population of less than seven thousand five hundred.
 - (V) For purposes of this subsection (1)(c), population is determined according to the most recently available population statistics of the United States census bureau.
- (2) The local licensing authority shall collect an annual license fee of twenty-five dollars if the licensed premises is located in a municipality or city and county and fifty dollars if the licensed premises is located outside the corporate limits of a municipality or city and county.
- (3) (a) In addition to any other requirements specified in this article 4 or article 3 of this title 44, to qualify for a new license under subsection (1)(a) of this section on or after June 4, 2018, or to renew a license that was issued under subsection (1)(a) of this section on or after June 4, 2018, a person must derive at least twenty percent of its gross annual revenues from total sales from the sale of food items for consumption off the premises.
 - (b) For purposes of calculating gross annual revenues from total sales, revenues derived from the sale of the following products are excluded:
 - (I) Fuel products, as defined in section 8-20-201 (2);
 - (II) Cigarettes, tobacco products, and nicotine products, as defined in section 18-13-121 (5); and
 - (III) Lottery products.
 - (c) The state licensing authority may adopt rules specifying the form and manner in which an applicant for a new or renewal license may demonstrate compliance with this subsection (3).
 - (d) This subsection (3) does not apply to a person that owns or leases a proposed fermented malt beverage retailer licensed premises and, as of January 1, 2019, has applied for or received from the municipality, city and county, or county in which the premises are located:

(I) A building permit for the structure to be used for the fermented malt beverage retailer licensed premises, which permit is currently active and will not expire before the completion of the liquor licensing process; or

(II) A certificate of occupancy for the structure to be used for the fermented malt beverage retailer licensed premises.

(e) As used in this subsection (3), "food items" means any raw, cooked, or processed edible substance, ice, or beverage, other than a beverage containing alcohol, that is intended for use or for sale, in whole or in part, for human consumption.

(4) On or after January 1, 2019, a fermented malt beverage retailer licensed under subsection (1)(a) of this section:

(a) (I) Shall not sell fermented malt beverages to consumers at a price that is below the retailer's cost, as listed on the invoice, to purchase the fermented malt beverages, unless the sale is of discontinued or close-out fermented malt beverages.

(II) This subsection (4)(a) does not prohibit a fermented malt beverage retailer from operating a bona fide loyalty or rewards program for fermented malt beverages so long as the price for the product is not below the retailer's costs as listed on the invoice. The state licensing authority may adopt rules to implement this subsection (4)(a).

(b) Shall not allow consumers to purchase fermented malt beverages at a self-checkout or other mechanism that allows the consumer to complete the fermented malt beverages purchase without assistance from and completion of the entire transaction by an employee of the fermented malt beverage retailer.

(5) A person licensed under subsection (1)(a) of this section that holds multiple fermented malt beverage retailer's licenses for multiple licensed premises may operate under a single or consolidated corporate entity but shall not commingle purchases of or credit extensions for purchases of alcohol beverage product from a wholesaler licensed under article 3 of this title 44 for more than one licensed premises. A wholesaler licensed under article 3 of this title 44 shall not base the price for the alcohol beverage product it sells to a fermented malt beverage retailer licensed under subsection (1)(a) of this section on the total volume of alcohol beverage product that the retailer purchases for multiple licensed premises.

(6) (a) A person licensed under subsection (1)(a) of this section who complies with this subsection (6) and rules promulgated under this subsection (6) may deliver fermented malt beverages in sealed containers to a person of legal age if:

(I) The person receiving the delivery of fermented malt beverages is located at a place that is not licensed pursuant to this section;

(II) The delivery is made by an employee of the fermented malt beverage retailer who is at least twenty-one years of age and who is using a vehicle owned or leased by the licensee to make the delivery;

(III) The person making the delivery verifies, in accordance with section 44-3-901 (11), that the person receiving the delivery of fermented malt beverages is at least twenty-one years of age; and

(IV) The fermented malt beverage retailer derives no more than fifty percent of its gross annual revenues from total sales of fermented malt beverages from the sale of fermented malt beverages that the fermented malt beverage retailer delivers.

(b) The state licensing authority shall promulgate rules as necessary for the proper delivery of fermented malt beverages pursuant to this subsection (6) and may issue a permit to any person who is licensed pursuant to and delivers fermented malt beverages under subsection

(1)(a) of this section. A permit issued under this subsection (6) is subject to the same suspension and revocation provisions as are set forth in section 44-3-601 for other licenses granted pursuant to article 3 of this title 44.

Source: L. 2018: (1)(c) amended and (3) added, (SB 18-243), ch. 366, p. 2192, § 4, effective June 4; entire article added with relocations, (HB 18-1025), ch. 152, p. 1072, § 2, effective October 1; (4) to (6) added, (SB 18-243), ch. 366, p. 2192, § 4, effective January 1, 2019. **L. 2019:** (5) amended, (SB 19-011), ch. 1, p. 16, § 27, effective January 31; (1)(c) amended, (SB 19-028), ch. 4, p. 23, § 2, effective February 20.

Editor's note: (1) This section is similar to former § 12-46-107 as it existed prior to 2018.

(2) (a) Subsections (1)(c) and (3) of this section were numbered as § 12-46-107 (1)(c) and (3), respectively, in SB 18-243. Those provisions were harmonized with and relocated to this section as this section appears in HB 18-1025.

(b) Subsections (4), (5), and (6) of this section were numbered as § 12-46-107 (4), (5), and (6), respectively, in SB 18-243. Those provisions were harmonized with and relocated to this section as this section appears in HB 18-1025, effective January 1, 2019.

(3) Subsection (1)(c)(III)(B) provided for the repeal of subsection (1)(c)(III)(B), effective September 1, 2021. (See L. 2019, p. 23.)

Cross references: For the legislative declaration in SB 18-243, see section 1 of chapter 366, Session Laws of Colorado 2018.

44-4-108. Exemption. (Repealed)

Source: L. 2018: Entire article added with relocations, (HB 18-1025), ch. 152, p. 1072, § 2, effective October 1. **L. 2019:** Entire section repealed, (SB 19-011), ch. 1, p. 17, § 28, effective January 31.

Editor's note: This section was similar to former § 12-46-108 as it existed prior to 2018.

44-4-109. Liquor industry working group - creation - duties - report - repeal. (Repealed)

Source: L. 2018: Entire article added with relocations, (HB 18-1025), ch. 152, p. 1072, § 2, effective October 1.

Editor's note: (1) This section was similar to former § 12-46-109 as it existed prior to 2018.

(2) Subsection (4) provided for the repeal of this section, effective July 1, 2019. (See L. 2016, p. 1528.)